



# **Report of the Audit Division on the AFL-CIO Cope Political Contributions Committee**

January 1, 2005 – December 31, 2006

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## **Why the Audit Was Done**

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

## **Future Action**

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

## **About the Committee (p. 2)**

AFL-CIO COPE Political Contributions Committee is a separate segregated fund of AFL-CIO and is headquartered in Washington, DC. For more information, see the chart on the Committee Organization, p.3.

## **Financial Activity (p. 2)**

- **Receipts**
  - From Individuals \$ 193,546
  - From Other Political Committees 48,250
  - Transfers from Affiliated Committees 1,168,138
  - Other Receipts 8,004
  - **Total Receipts** \$ 1,417,938
- **Disbursements**
  - Contributions to Candidates/Committees \$ 1,304,452
  - Other Disbursements 166,520
  - **Total Disbursements** \$ 1,470,972

## **Findings and Recommendations (p. 3)**

- Misstatement of Financial Activity (Finding 1)
- Transfers Received from Separate Segregated Funds (Finding 2)

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<sup>1</sup> 2 U.S.C. §438(b).

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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the AFL-CIO COPE Political Contributions Committee (AFL-CIO COPE), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### **Scope of Audit**

Following Commission approved procedures, the Audit staff evaluated various factors and as a result, this audit examined:

1. The consistency between reported figures and bank records.
2. The disclosure of individual contributors' occupation and name of employer.
3. The receipt of transfers received from other separate segregated funds.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	<b>AFL-CIO COPE</b>
• Date of Registration	March 13, 1975
• Audit Coverage	January 1, 2005 – December 31, 2006
<b>Headquarters</b>	Washington, DC
<b>Bank Information</b>	
• Bank Depositories	1
• Bank Accounts	2 (1 Business Account and 1 Business Money Market Account)
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Richard L. Trumka
• Treasurer During Period Covered by Audit	Richard L. Trumka
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ January 1, 2005</b>	<b>\$ 122,740</b>
○ From Individuals	193,546
○ From Other Political Committees	48,250
○ Transfers from Affiliated Committees	1,168,138
○ Other Receipts	8,004
<b>Total Receipts</b>	<b>\$ 1,417,938</b>
○ Contributions to Candidates/Committees	1,304,452
○ Other Disbursements	166,520
<b>Total Disbursements</b>	<b>\$ 1,470,972</b>
<b>Cash on hand @ December 31, 2006</b>	<b>\$ 69,706</b>

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Misstatement of Financial Activity**

A comparison of AFL-CIO COPE's reported activity to bank records revealed a misstatement of cash on hand and disbursements in years 2005 and 2006. It was recommended that AFL-CIO COPE file amended reports to correct the misstatement. In response to the interim audit report, AFL-CIO COPE filed amended reports to correct the misstatements. AFL-CIO COPE also corrected its cash balance on its September 2009 monthly report. (For more detail, see p. 4)

##### **Finding 2. Transfers Received from Separate Segregated Funds**

During the audit period, AFL-CIO COPE received transfers totaling \$1,100,000 from two separate segregated funds. AFL-CIO COPE has not been able to demonstrate that the two separate segregated funds, CWA COPE Political Contributions Committee (CWA COPE) and American Federation of Teachers AFL-CIO Committee on Political Education (AFT AFL-CIO), have met the transmittal and recordkeeping requirements for collecting agents. AFL-CIO COPE stated that such transfers are a longstanding practice and that they are in compliance with the Commission's regulations. The Audit staff recommended that AFL-CIO COPE amend past reports and implement new procedures to ensure the proper accounting, reporting, and recordkeeping procedures are followed for these transfers. In response to the interim audit report, counsel for AFL-CIO COPE stated that it declines to accept the Audit staff's recommendation and believes that it is unfair to impose new reporting requirements without a change in the governing regulations. (For more detail, see p. 5)

## Part IV

# Findings and Recommendations

### Finding 1. Misstatement of Financial Activity

#### Summary

A comparison of AFL-CIO COPE's reported activity to bank records revealed a misstatement of cash on hand and disbursements in years 2005 and 2006. It was recommended that AFL-CIO COPE file amended reports to correct the misstatement. In response to the interim audit report, AFL-CIO COPE filed amended reports to correct the misstatements. AFL-CIO COPE also corrected its cash balance on its September 2009 monthly report.

#### Legal Standard

**Contents of Reports.** Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year; and
- The total amount of disbursements for the reporting period and for the calendar year;
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(4), (2) and (4).

#### Facts and Analysis

The Audit staff reconciled the reported financial activity to the bank records for 2005 and 2006. It was determined that AFL-CIO COPE misstated cash on hand and disbursements for both years. The following charts outline the discrepancies for both years and provide explanations for the misstated activity.

2005 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance	\$105,571	\$122,740	\$17,169 Understated
Receipts	\$481,104	\$480,675	\$429 Overstated
Disbursements	\$513,314	\$530,093	\$16,779 Understated
Ending Cash Balance	\$70,861	\$73,322	\$2,461 Understated

The net understatement of disbursements was the result of the following:

• Disbursements not reported	+ \$15,294
• Reported disbursements that did not clear bank	+ 1,500
• Disbursements reported with incorrect amounts	- 15
• Net Understatement of Disbursements	<u>\$16,779</u>

<b>2006 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Opening Cash Balance	\$70,861	\$73,322	\$2,461 Understated
Receipts	\$931,728	\$937,263	\$5,535 Understated
Disbursements	\$912,308	\$940,879	\$28,572 Understated
Ending Cash Balance	\$90,282	\$69,706	\$20,576 Overstated

The net understatement of disbursements was the result of the following:

• Disbursements reported incorrectly	+ \$27,500
• Disbursements reported with incorrect amounts	1,051
• Unexplained differences	+ 21
• Net Understatement of Disbursements	<u>\$28,572</u>

#### **Cash Balances:**

AFL-CIO COPE misstated the cash balances throughout 2005 and 2006 due to the errors outlined above and unknown adjustments from prior reporting periods. On December 31, 2006, the cash balance was overstated by \$20,576.

This matter was presented to the representatives for AFL-CIO COPE during the exit conference. The representatives did not provide any comments to explain the misstatements but later indicated that they would file amended reports to correct these errors.

#### **Interim Audit Report Recommendation and Committee's Response**

The Audit staff recommended that AFL-CIO COPE file amended reports to correct the misstatements noted above. It was also recommended that, AFL-CIO COPE amend the cash balance of its most recent report with an explanation that it resulted from audit adjustments from a prior period. In response to the interim audit report, AFL-CIO COPE stated that it concurred that its reported figures for calendar years 2005 and 2006 were inaccurate, and filed amended reports to correct the misstatements. AFL-CIO COPE also corrected its cash balance on an amended September 2009 monthly report.



## **Finding 2. Transfers Received from Separate Segregated Funds**

### **Summary**

During the audit period, AFL-CIO COPE received transfers totaling \$1,100,000 from two separate segregated funds. AFL-CIO COPE has not been able to demonstrate that the two separate segregated funds, CWA COPE Political Contributions Committee (CWA COPE) and American Federation of Teachers AFL-CIO Committee on Political Education (AFT AFL-CIO), have met the transmittal and recordkeeping requirements for collecting agents. AFL-CIO COPE stated that such transfers are a longstanding practice and that they are in compliance with the Commission's regulations. The Audit staff recommended that AFL-CIO COPE amend past reports and implement new procedures to ensure the proper accounting, reporting, and recordkeeping procedures are followed for these transfers. In response to the interim audit report, counsel for AFL-CIO COPE stated that it declines to accept the Audit staff's recommendation and believes that it is unfair to impose new reporting requirements without a change in the governing regulations.

### **Legal Standard**

**A. Affiliated Definition.** Established, financed, maintained or controlled by the same organization. Affiliated political committees are considered one political committee for purposes of contribution limits. Committees presumed to be affiliated include those established, financed, maintained or controlled by a single national or international union and/or its local unions or other subordinate organizations. Also, committees established by an organization of national or international unions and/or all its State or local central bodies are presumed to be affiliated. Affiliation is not presumed between unions and organizations of national or international unions. 11 CFR §§100.5(g) and 110.3(a).

**B. Collecting Agent Definition.** A collecting agent is an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related. A collecting agent may be the separate segregated fund's connected organization or an organization or committee affiliated with the SSF, or a local, national, or international union collecting contributions on behalf of the separate segregated fund of any federation with which the local, national, or international union is affiliated. 11 CFR §102.6(b)(1).

**C. Requirements for Collecting Agents.** The separate segregated fund (SSF) is responsible for ensuring that the recordkeeping, reporting, and transmittal requirements are met.

1. Collecting agent may solicit only those individuals who are eligible for solicitation under the law, and pay the expenses of soliciting.
2. Collecting agent may include a solicitation for contributions to an SSF in a bill for another payment.
3. Collecting agent may establish a separate transmittal account solely for the SSF's contributions or use its own account for the temporary deposit and transmittal of

contributions to the SSF. The agent must keep separate records of all receipts and deposits that represent contributions to the SSF.

4. Collecting agent must transfer the funds within 10 days for all contributions over \$50 and within 30 days for contributions \$50 or less.
5. Collecting agent must forward the required recordkeeping information to the SSF along with the collected contributions, and maintain records of SSF contribution deposits and transmittals for three years.
6. The SSF receiving contributions collected by a collecting agent shall report the full amount of each contribution received as a contribution from the original contributor to the extent required by 11 CFR §104.3(a), 11 CFR §§102.6(c) and 102.8(b).

**D. When to Itemize.** Political committees other than authorized candidate committees must itemize:

- Any contribution from an individual that exceeds \$200 per calendar year, either by itself or when aggregated with other contributions from the same contributor; and
- Every contribution from any political committee, regardless of the amount.
- Every transfer from another political party committee, regardless of whether the committees are affiliated. 2 U.S.C. §434(b)(3)(A), (B) and (D).

**E. Definition of Itemization.** Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

- The amount of the contribution;
- The date of receipt (the date the committee received the contribution);
- The full name and address of the contributor;
- In the case of contributions from individual contributors, the contributor's occupation and name of his or her employer; and
- The calendar year-to-date total of all contributions from the same contributor. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A) and (B).

### **Facts and Analysis**

During the audit period, AFL-CIO COPE received four transfers from AFT AFL-CIO totaling \$800,000 and four transfers from CWA COPE totaling \$300,000. These transfers were reported by AFL-CIO COPE on Line 12 (Transfers from Affiliated/Other Party Committees) and described as joint fundraising transfers or as payroll deductions on its Schedules A (Itemized Receipts). The transfers were received and reported by AFL-CIO COPE without detail as to which individual contributors made up each transfer, or how much was given by each contributor.

CWA COPE is the separate segregated fund of the international union Communications Workers of America (CWA). AFT AFL-CIO is the separate segregated fund of the international union American Federation of Teachers (AFT). Both CWA and AFT are members of the federation of unions AFL-CIO and, as such, may serve as collecting agents for AFL-CIO COPE. The separate segregated funds of these unions (CWA COPE, AFT AFL-CIO and AFL-CIO COPE) are not considered "affiliated" within the

meaning of 11 CFR §110.3 and, therefore, are subject to separate contribution limitations and must independently report individual contributions to their respective organizations.

CWA COPE and AFT AFL-CIO initially receive and report contributions for their respective committees as well as AFL-CIO COPE. These contributions are often received from individuals who sign voluntary payroll deduction authorization cards. The authorization cards contain a statement that the contributions will be used in a "joint fundraising" effort and that a portion of their contributions would go to AFL-CIO COPE. The contributors do not designate specific or separate contribution amounts for AFL-CIO COPE. Likewise, the timing and amounts transferred to AFL-CIO COPE were based on periodic discussions with officers of CWA COPE and AFT AFL-CIO.

In accordance with 11 C.F.R. §102.6(c)(1), AFL-CIO COPE was responsible for ensuring that both AFT AFL-CIO and CWA COPE complied with the collecting agent rules. Under these rules, CWA COPE and AFT AFL-CIO must:

- Operate a separate transmittal account solely for AFL-CIO COPE contributions, or maintain records of all such receipts and deposits relating to AFL-CIO COPE transfers from their own accounts.
- Transfer funds to AFL-CIO COPE within 10 days for contributions over \$50 and within 30 days for contributions \$50 or less.
- Forward all recordkeeping information relating to the transfers to AFL-CIO COPE and maintain documentation of the deposits and transmittals for three years.

Since AFL-CIO COPE did not provide documentation that identified the individual contributions supporting the amounts transferred or any documentation that detailed the timing or calculation of the amounts transferred, it did not ensure that the collecting agent rules were met. AFL-CIO COPE also did not properly report contributions collected by collecting agents since they reported these contributions on Line 12 as transfers from the collecting agents rather than on Line 11 (Receipts from Individuals/Persons) as contributions from the original contributor.

The Audit staff presented this matter to AFL-CIO COPE representatives during the exit conference. In response, counsel for AFL-CIO COPE challenged the conclusion of the Audit staff with the following arguments.

First, counsel for AFL-CIO COPE addressed the timing of the transfers and argued that the requirements at 11 CFR §102.6(c)(4) are not applicable to the situation because of a joint fundraising arrangement among the separate segregated funds and their connected organizations. However, no joint fundraising agreement was presented.

Counsel contends that if 11 CFR §102.6(c)(4) was applicable, the transfers did conform to the timing requirements. In support of his argument, counsel provided data showing average daily receipts for both CWA COPE and AFT AFL-CIO. Since contributions were predominately \$50 or less, counsel believes that within the 30 days prior to each of

the transfers to AFL-CIO COPE, both CWA COPE and AFT AFL-CIO received far more contributions from individuals than was transferred.

Based on its own analysis, the Audit staff concurs that both AFT AFL-CIO and CWA COPE received sufficient contributions within 30 days prior to each transfer to AFL-CIO COPE. However, based on the available records, the Audit staff was not able to identify which contributions were included in the transfers. The Audit staff maintains that the requirements at 11 CFR §102.6(c)(4) and 11 CFR §102.8(b) are applicable and the amount of each contribution being transferred is required to be provided to AFL-CIO COPE within the appropriate time frame along with the required records supporting the contributions.

Second, counsel discusses the issue of having a separate account solely for AFL-CIO COPE contributions. Counsel confirms that both AFT AFL-CIO and CWA COPE did not maintain a separate account solely for AFL-CIO COPE contributions, did not keep separate records of contributions attributable to its transfers, or give that information to AFL-CIO COPE. Again, counsel argues that such requirements are not applicable since 11 CFR §102.6 does not recognize the dual roles of AFT AFL-CIO and CWA COPE as collecting agents for AFL-CIO COPE and as separate segregated funds soliciting and receiving contributions for themselves. According to counsel, AFT AFL-CIO and CWA COPE records and reports all disclosure information for AFL-CIO COPE contributions because the contributors authorize the actual remittance of their contributions only to AFT AFL-CIO and CWA COPE via standard payroll deduction authorization cards. These cards also inform contributors of the joint fundraising arrangement and acknowledge that contributions will be used for "political purposes."

Counsel further explains that reporting the transfers without detailing the associated individual contributors is sufficient under 11 CFR §104.3(a) and that the regulations do not plainly require a shift to AFL-CIO COPE of the responsibility to report the individual contributors. According to counsel, the current practice "underscores that these transfers are most accurately viewed as comprised of funds that are not attributable to any particular individual, but are comprised of unitemized aggregate portion of all of them".

The Audit staff believes that 11 CFR §102.6(c)(4) requires AFT AFL-CIO and CWA COPE to record the full amount and details of each contribution on behalf of AFL-CIO COPE. Such information is necessary in order to specifically track what amounts are contributed to the respective organizations, as well as to monitor itemization and limitation requirements. It is further noted that by viewing the transfer amount as being comprised of a portion of each contribution instead of the full amount of those contributions received prior to the transfer would likely not support the argument that the transfers were made timely.

Finally, counsel explains how the proposed changes would cause a significant administrative burden on all affected committees and would ultimately result in a reduction of contributor information on the public record. According to counsel, the number of individual contributors itemized by AFT AFL-CIO and CWA COPE would be fewer since a portion of their contributions would be attributed to AFL-CIO COPE.

In summary, the Audit staff accepts that both AFT AFL-CIO and CWA COPE can function as collecting agents for AFL-CIO COPE. However, as collecting agents, AFT AFL-CIO and CWA COPE must abide by the rules governing collecting agents at 11 CFR §102.6(c). During the period covered by the audit, AFT AFL-CIO and CWA COPE did not have separate transmittal accounts or keep separate records of all receipts and deposits that represent contributions to AFL-CIO COPE, or distinguish these contributions at the individual level. Given that these records were not kept, the arrangements with AFT AFL-CIO and CWA COPE did not satisfy the requirements of the collecting agent regulations. AFL-CIO COPE did not ensure that both AFT AFL-CIO and CWA COPE complied with the collecting agent rules in accordance with 11 C.F.R. §102.6(c)(1).

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that AFL-CIO COPE document that procedures have been implemented to ensure the proper accounting, reporting, and recordkeeping in accordance with 11 CFR §102.6(b)(1) and (c).

Reports covering the audit period and any subsequent periods should be corrected to reflect all amounts received from collecting agents as contributions on Line 11 (Receipts from Individuals/Persons) instead of Line 12 (Transfers from Affiliated/Other Party Committees). Contributions aggregating over \$200 should be itemized on Schedule A supporting Line 11(a)(i) and the aggregate amount of unitemized contributions should be reported on Line 11(a)(ii).

AFL-CIO COPE is responsible for ensuring that collecting agents forward contributions and all contributor and date of receipt information to AFL-CIO COPE within 10 or 30 days depending on the contribution amounts. Records for such contributions are required to be retained for three years. 11 CFR §§102.6(c)(5) and (6) and 11 CFR §102.8.

In response to the interim audit report, counsel for AFL-CIO COPE stated that it concurs that both AFT AFL-CIO and CWA COPE may act as collecting agents for AFL-CIO COPE and that the transfers made complied with the timing requirements of 11 CFR §102.6(c)(4), although it disagrees that this regulation is applicable to its situation.

Further, counsel disagrees that the separate segregated funds must establish separate transmittal accounts solely for AFL-CIO COPE contributions, or must maintain contribution records of the contributions that comprise the transfers. Also, counsel disagrees that the separate segregated funds are required to forward all recordkeeping information to AFL-CIO COPE, and having AFL-CIO COPE report the incoming transfers on Line 11 (Receipts from Individuals/Persons), itemizing individual contributions that exceed \$200. Counsel explains that the joint fundraising nature makes the individual attribution to, and reporting by AFL-CIO COPE unnecessary. It states that the transfers themselves provide the necessary information because individual CWA/AFL-CIO members authorize all of their contributions to be remitted to CWA COPE and then delegate to the two separate segregated funds the authority to apportion the total receipts between them.

As such, AFL-CIO COPE declines to accept the recommendation that it amend its reports for the audit period and any subsequent periods. It points out that if a reallocation was applied to the contributions being transferred in 2005 and 2006, no individual member would have contributed over \$200 to AFL-CIO COPE and therefore, no itemization of the contributions would be necessary on its reports. AFL-CIO COPE maintains that amending reports would not provide any public benefit and would be a highly burdensome undertaking.

In closing, counsel states that the arrangement at issue has been in place for at least 25 years and has been regularly reported by all participating separate segregated funds. It submits that, absent a change in the governing regulations, they should be entitled to continue under the current arrangement and it is manifestly unfair to impose new requirements now.

AFL-CIO COPE's response to the interim audit report reiterates the arguments made earlier. However, unlimited transfers between committees are permitted in very limited circumstances. Those relevant to this situation would include transfers between affiliated committees, the transfer of joint fundraising proceeds, and the transfer of funds received via a collecting agent. Each has specific requirements. First, AFT AFL-CIO and CWA COPE are not affiliated with AFL-CIO COPE under Commission regulations. If they were affiliated they would share a single contribution limitation. Second, the prospect of a joint fundraising arrangement is also not applicable to these committees since they were not joint fundraising arrangements as described in 11 CFR §102.17. As noted above, the relationship between these committees appears to be a collecting agent relationship as described at 11 CFR §102.6. However, AFT AFL-CIO, CWA COPE and AFL-CIO COPE are not meeting the requirements of that regulation.